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May 21, 1987

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CERTIFIED MAIL R.R.R.

Mr. Stanley L. Laskowski,
Acting Director
Hazardous Waste Management
Division
Region III
United States Environmental
Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107

Re: Fike Chemical Inc./Superfund Site/Artel Chemical;
Your Reference 3HW16

Dear Mr. Laskowski:

We represent and appear for Melvin Blum ("Blum") and Atomergic Chemetals Corporation ("Atomergic")¹ in the above-referenced matter. We write in response to your letter of April 10, 1987 addressed to Melvin Blum, President Atomergic Chemicals, Inc.

(a) Status Of Blum And Atomergic.

You state that "EPA has information indicating that you and your company has or had ownership of stock in Artel Chemical

¹. Your letter refers to "Atomergic Chemicals, Inc." This entity is not known to our client.

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Corporation and/or a significant involvement in the operation of the Artel Chemical Corporation." Unfortunately, you did not describe or otherwise identify that information. Thus, we are unable to specifically comment on the information as we are not privy to it. However, it is our belief that any inference of liability drawn from such information would be incorrect, because neither Blum nor Atomergic has ever been an owner or operator of the site or facility in the above-referenced matter.

We are informed by our clients that Atomergic does not and has not owned any stock in Fike Chemical Inc. or Artel Chemical Corporation (the "Fike/Artel Company"). Similarly, Atomergic has never "operated" the above-referenced facility. We are unaware of any evidence that would support a contrary inference. Indeed, the suggestion that Atomergic is an owner or operator of Fike/Artel Company appears to be totally without factual foundation.

Blum has unequivocally informed us that he does not and never has owned any stock of the Fike/Artel Company. Indeed, his relationship to that company is quite tenuous. Thus, Blum is a fifty percent shareholder in West Virginia Chemical Corp., a corporation organized under the laws of New York ("WVCC"). The other fifty percent of WVCC is owned by WVCC's president, Larry Westreich and Jack Jacobs. In 1986, WVCC became a fifty-one percent owner of the Fike/Artel Company. Blum became the president of the Fike/Artel Company in June 1986. However, Blum was not charged with, and never assumed the role of, an operating officer of Fike/Artel Company. In fact, Blum's tenure as president has been in name only, as Mr. Westreich has maintained control of the Fike/Artel Company, as well as WVCC. The day to day operation of the Fike/Artel Company has been left in the hands of its former president and owner, Elmer A. Fike and his son-in-law, Tom Beal. The chief operating officer of the Fike/Artel Company would appear to be either Fike or Westreich, and/or Beal.

Accordingly, neither Blum nor Atomergic is an owner or operator within the meaning of Section 107(a)(1) or (2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(1) or (2). Certainly, Blum has never had a significant involvement in the operation of the Fike/Artel Company. In any event, Blum's involvement would not rise to a level of an operator within the meaning of CERCLA. Compare New York v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985), where liability under Section 107(a)(1) turned on the fact that the sole stockholder of a corporation was actually managing the affairs of the corporation and factually "was in charge of the operation of the facility". Nor, should EPA seek to impose liability on Blum by virtue of his shareholder's position in a parent corporation under a strained "piercing of the corporate

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veil" theory as the corporate form has been observed, and the adherence to such form will not produce an inequitable result. See EPA Guidance Memo, "Liability of Corporate Shareholders and Successor corporation...." issued by the former Assistant Administrator for Solid Waste and Emergency Response, dated June 13, 1984.

(b) Information In The Possession Of EPA.

We respectfully request that you furnish the undersigned with the information referred to in your letter of April 10, 1987. This request is made pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. Should you have any objections to the form of this submission, please notify the undersigned immediately.

(c) Request For Financial Information.

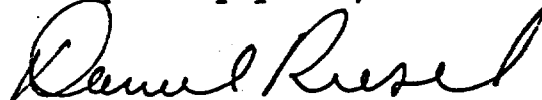
Atomergic is insured against liability arising from the generation, transportation, storage, treatment, handling, disposal or a leak of hazardous substances or wastes under certain circumstances. No policy would appear to be applicable to the Fike/Artel facility or the Fike/Artel Company. Accordingly, we request that you reconsider your demand for insurance policies issued to Atomergic.

(d) Conclusion.

In addition to the requests set forth in Sections "(b)" and "(c)," above, we respectfully request that you (i) either acknowledge to the undersigned that neither Blum nor Atomergic is an owner or operator within the meaning of Section 107(a)(1) or (2), or (ii) specify the reasons why you contend that our clients fall into one or both of the aforesaid categories.

I look forward to hearing from you in the immediate future.

Very truly yours,



Daniel Riesel

DR:db

cc: William Cawley (3HW16)
CERCLA Remedial Enforcement
Manager
(Certified Mail, R.R.R.)

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